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JW PROPERTIES SDN BHD v. PERBADANAN KEMAJUAN PERTANIAN SELANGOR & ANOR

COURT OF APPEAL, PUTRAJAYA
BALIA YUSOF WAHI JCA
BADARIAH SAHAMID JCA
B ABDUL RAHMAN SEBLI JCA
[CIVIL APPEALS NO: B-01-100 & B-01-101-03-2014]
30 OCTOBER 2015

C ***LAND LAW:*** *Acquisition of land – Compensation – Claim for – Land alienated to first respondent – Subsequent sale of land to appellant – Issue document of title issued in name of first respondent – Compulsory acquisition – Whether appellant beneficial owner of land – Whether appellant entitled to compensation*

D The Selangor State Government had approved alienations of two pieces of land, mainly the Jugra land and the Api-Api land to Perbadanan Kemajuan Pertanian Selangor ('PKPS'). At the time of the approvals, the issue documents of title ('IDT') for the two lands were yet to be issued by the State Authority. By a sale and purchase agreement executed in 1995 ('the first agreement'), PKPS sold both lands to PKPS Aquaculture Sdn Bhd ('PKPS Aquaculture') in which PKPS was a shareholder. Clause 3(3) of the first E agreement imposed on PKPS the obligation to obtain the necessary consent from the State Authority for the transfer of the Jugra and Api-Api lands to PKPS Aquaculture and that in the event the consent was not obtained within six months from the date of the agreement, the first agreement would become null and void. On the same day, PKPS entered into a sale of shares agreement F ('the second agreement') with Suati Holdings Sdn Bhd ('Suati Holdings') for the sale of all of PKPS shares in PKPS Aquaculture to Suati Holdings. Having been bought over by Suati Holdings, PKPS Aquaculture changed its name to Suati Aquaventures Sdn Bhd (hereinafter referred to 'PKPS Aquaculture'). By a subsequent sale and purchase agreement entered in 1997 G ('the third agreement'), PKPS Aquaculture sold the Api-Api land to the appellant ('JW Properties'). The IDT of the lands were issued after the sale of the Api-Api land to the appellant. However, the IDT was issued under the name of PKPS as the registered owner of the lands. JW Properties then requested PKPS to procure the issuance of the IDT to the Api-Api land and H to transfer the land to JW Properties. However, PKPS argued that it was neither informed nor its consent sought by PKPS Aquaculture before the execution of the agreement to sell the Api-Api land to JW Properties. On 16 December 2011, a notice was published for the acquisition of the Api-Api land. As such, JW Properties claimed that it was entitled to compensation for the compulsory acquisition of the Api-Api land. The High Court Judge I decided that JW Properties was not the beneficial owner of the Api-Api land and accordingly ruled that the person to whom the compensation was payable was the registered proprietor of the land *ie*, PKPS. Dissatisfied,

JW Properties appealed against the decision. In the appeal, the second respondent supported PKPS's position, principally on the ground that 'registration is everything'. A

Held (allowing appeal with costs)
Per Abdul Rahman Sebli JCA delivering the judgment of the court: B

(1) It is highly improbable that PKPS had no knowledge and had not been informed of the agreement. Since purchasing the Api-Api land in 1997, JW Properties had enjoyed quiet and uninterrupted occupation of the land for close to 20 years. There was never any dispute by PKPS that JW Properties was in unlawful occupation of the land, nor was there any suggestion that JW Properties was squatting on the land. Neither did PKPS take any step or action to challenge JW Properties' occupation of the land. This was perhaps as because PKPS had already been paid for the land and had been made aware of the assignment of rights by PKPS Aquaculture. (paras 17 & 18) C

(2) The focal point of the High Court's decision was that since no consent from the State Authority had been obtained, no beneficial interest in the land had passed to PKPS Aquaculture. Therefore, PKPS Aquaculture could not have passed any beneficial interest in the land to JW Properties. (para 23) D

(3) The interest that JW Properties was required to establish his claim for compensation under the Land Acquisition Act 1960 ('Act') was different from the interest that is recognised under the National Land Code ('NLC'), which stresses on registration or registrable interest, hence the catchphrase 'registration is everything'. If it were so, there would be no necessity to conduct an enquiry under s. 12 of the Act. The enquiry would then turn into a mere formality to confirm the registered owner's entitlement to the compensation. (paras 26 & 27) E F

(4) PKPS had received in full the purchase price of RM4 million for the Jugra and Api-Api lands. It could not be denied that JW Properties had paid for the Jugra and Api-Api lands that PKPS Aquaculture purchased from PKPS. Under the circumstances, to allow PKPS to benefit from the acquisition of the land merely on account of the fact that it was the registered proprietor of the Api-Api land would be nothing short of unjust enrichment. (paras 33 & 34) G H

(5) JW Properties as a *bona fide* purchaser for value of the Api-Api land had acquired sufficient lawful interest over the land to entitle it to be paid the compensation sum notwithstanding the fact that the consent to transfer had not been obtained from the State Authority. PKPS was not allowed to benefit from its own wrong and could not be rewarded with a windfall, which it did not deserve. PKPS's insistence that it be paid the compensation sum by reason of it being the registered owner of the I

land without considering the appellant's interest was an unconscionable conduct. Equity must step in as this was not something that the court should condone. (para 35)

(6) This was a case where PKPS had wilfully and intentionally refused and failed to apply for the consent from the State Authority, in breach of its obligation under cl. 3(3) of the first agreement. The High Court Judge was wrong in deciding that the compensation was payable to PKPS on the sole basis that no consent from the State Authority had been obtained for the transfer of the Api-Api land to PKPS Aquaculture. JW Properties had acquired an equitable and therefore lawful interest in the Api-Api land and was entitled to receive the compensation for the Api-Api land. (paras 39 & 52)

(7) There was no evidence to show that the second respondent had acted otherwise than in good faith in conducting the land enquiry. The second respondent was merely performing his public duty under the NLC. Therefore, the second respondent was protected by s. 22 of the NLC and no adverse order was made against the second respondent, including on costs. (paras 56 & 57)

Bahasa Malaysia *Headnotes*

Pada tahun 1990, Kerajaan Negeri Selangor telah meluluskan pemberian milik dua bidang tanah kepada Perbadanan Kemajuan Pertanian Selangor ('PKPS') iaitu tanah Jugra dan tanah Api-Api. Pada masa kelulusan, dokumen-dokumen hak milik ('IDT') untuk kedua-dua tanah masih belum dikeluarkan oleh Pihak Berkuasa Negeri. Melalui satu perjanjian jual beli yang dimeterai pada 1995 ('perjanjian pertama'), PKPS menjual kedua-dua tanah kepada PKPS Aquaculture Sdn Bhd ('PKPS Aquaculture') di mana PKPS adalah pemegang saham. Klausa 3(3) perjanjian pertama mengenakan ke atas PKPS kewajipan untuk mendapatkan kebenaran yang diperlukan daripada Pihak Berkuasa Negeri bagi pemindahan tanah Jugra dan Api-Api kepada PKPS Aquaculture dan bahawa sekiranya kebenaran tidak diperolehi dalam tempoh enam bulan dari tarikh perjanjian, perjanjian pertama akan menjadi batal dan tidak sah. Pada hari yang sama, PKPS memeterai satu perjanjian penjualan saham ('perjanjian kedua') dengan Suati Holdings Sdn Bhd ('Suati Holdings') untuk menjual kesemua saham PKPS dalam PKPS Aquaculture kepada Suati Holdings. Setelah dibeli oleh Suati Holdings, PKPS Aquaculture menukar namanya kepada Suati Aquaventures Sdn Bhd (selepas ini dirujuk sebagai 'PKPS Aquaculture'). Berikutan perjanjian jual beli yang kemudiannya dimeterai pada 1997 ('perjanjian' ketiga), PKPS Aquaculture telah menjual tanah Api-Api kepada perayu ('JW Properties'). IDT kedua-dua tanah dikeluarkan selepas penjualan tanah Api-Api kepada perayu. Walau bagaimanapun, IDT dikeluarkan atas nama PKPS sebagai pemilik berdaftar. JW Properties kemudiannya meminta PKPS untuk mendapatkan pengeluaran dokumen hak milik tanah Api-Api dan

memindahkannya kepada JW Properties. Tetapi, PKPS menghujahkan bahawa ia tidak diberitahu atau diminta persetujuannya oleh PKPS Aquaculture sebelum pelaksanaan perjanjian jual beli tanah Api-Api kepada JW Properties. Pada 16 Disember 2011, satu notis dikeluarkan bagi pengambilan wajib tanah Api-Api. Oleh itu, JW Properties mendakwa bahawa ia berhak mendapat pampasan untuk pengambilan wajib tanah Api-Api. Hakim Mahkamah Tinggi memutuskan bahawa JW Properties bukan pemilik benefisial tanah Api-Api dan oleh demikian, telah memutuskan bahawa pihak yang sepatutnya mendapat pampasan adalah pemilik berdaftar tanah, iaitu PKPS. Tidak berpuas hati, JW Properties merayu terhadap keputusan tersebut. Dalam rayuannya, responden kedua menyokong kedudukan PKPS, terutamanya atas alasan bahawa 'pendaftaran adalah segala-galanya'.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Abdul Rahman Sebli HMR menyampaikan penghakiman mahkamah:

(1) Tidak mungkin PKPS tidak mempunyai pengetahuan dan tidak dimaklumkan mengenai perjanjian tersebut. Sejak membeli tanah Api-Api pada tahun 1997, JW Properties telah menikmati milikan aman tanpa gangguan ke atas tanah tersebut selama hampir 20 tahun. Tiada sebarang pertikaian oleh PKPS bahawa JW Properties menduduki tanah secara salah, ataupun tiada sebarang cadangan bahawa JW Properties telah bersetinggan di atas tanah tersebut. Juga, PKPS tidak mengambil apa-apa langkah atau tindakan untuk mencabar pendudukan JW Properties di atas tanah tersebut. Ini mungkin kerana PKPS telah dibayar bagi tanah tersebut dan telah dimaklumkan mengenai penyerahakkan oleh PKPS Aquaculture.

(2) Tumpuan utama keputusan Mahkamah Tinggi adalah bahawa oleh kerana tiada kebenaran daripada Pihak Berkuasa Negeri diperolehi, tiada kepentingan benefisial dalam tanah yang boleh diserahkan kepada PKPS Aquaculture. Oleh itu, PKPS Aquaculture tidak boleh menyerahkan apa-apa kepentingan benefisial tanah kepada perayu.

(3) Kepentingan yang harus dibuktikan oleh JW Properties untuk tuntutan pampasan di bawah Akta Pengambilan Tanah 1960 ('Akta') adalah berbeza daripada kepentingan yang diiktiraf di bawah Kanun Tanah Negara ('KTN'), yang menekankan pendaftaran atau kepentingan boleh didaftar, maka kata-kata hikmah 'pendaftaran adalah segala-galanya'. Jika begitu, tiada keperluan untuk menjalankan siasatan di bawah s. 12 Akta. Siasatan akan bertukar menjadi formaliti semata-mata untuk mengesahkan hak pemilik berdaftar untuk mendapat pampasan.

(4) PKPS telah menerima dengan sepenuhnya harga belian sebanyak RM4 juta bagi tanah Jugra dan Api-Api. Tidak boleh dinafikan bahawa JW Properties telah membayar untuk tanah Jugra dan Api-Api yang dibeli

oleh PKPS Aquaculture daripada PKPS. Dalam keadaan ini, untuk membolehkan PKPS mendapat manfaat daripada pengambilan wajib tanah semata-mata disebabkan oleh fakta bahawa ia adalah pemilik berdaftar tanah Api-Api akan membawa kepada pengkayaan tak patut.

(5) JW Properties sebagai pembeli *bona fide* untuk nilai tanah Api-Api telah memperoleh kepentingan sah mencukupi ke atas tanah yang memberinya hak untuk dibayar pampasan walaupun kebenaran pindah milik belum diperolehi daripada Pihak Berkuasa Negeri. PKPS tidak boleh dibenarkan mendapat manfaat daripada salah laku sendiri dan diberi ganjaran yang tidak sepatutnya. Desakan PKPS bahawa ia dibayar wang pampasan atas sebab ia adalah pemilik berdaftar tanah tersebut tanpa mengambil kira kepentingan perayu adalah tindakan yang tidak berpatutan. Ekuiti harus campur tangan kerana ini bukanlah sesuatu yang harus dibiarkan oleh mahkamah.

(6) Ini adalah kes di mana PKPS telah dengan sengaja enggan dan gagal untuk memohon kebenaran daripada Pihak Berkuasa Negeri, melanggar obligasinya di bawah kl. 3(3) perjanjian pertama. Hakim Mahkamah Tinggi telah terkhilaf dalam memutuskan bahawa pampasan harus dibayar kepada PKPS atas alasan tunggal bahawa tiada kebenaran daripada Pihak Berkuasa Negeri telah diperolehi bagi pindah milik tanah Api-Api kepada PKPS Aquaculture. JW Properties telah memperoleh kepentingan ekuiti dan oleh itu kepentingan sah ke atas tanah Api-Api dan berhak menerima pampasan bagi tanah Api-Api.

(7) Tiada keterangan yang menunjukkan bahawa responden kedua telah bertindak selain daripada dengan niat baik dalam menjalankan siasatan tanah tersebut. Responden kedua hanya menjalankan tugas awam di bawah KTN. Oleh itu, responden kedua dilindungi oleh s. 22 KTN dan tiada perintah bertentangan yang boleh dibuat terhadap responden kedua, termasuk kos.

Case(s) referred to:

Borneo Housing Mortgage Finance Bhd v. Time Engineering Bhd [1996] 2 CLJ 561 FC ***(refd)***

Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia [2010] 8 CLJ 761 FC ***(refd)***

Gimstern Corp (M) Sdn Bhd & Anor v. Global Insurance Co Sdn Bhd [1987] 1 CLJ 123; [1987] CLJ (Rep) 102 SC ***(refd)***

Goo Hee Sing v. Will Raja Perumal & Anor [1994] 1 CLJ 255 HC ***(refd)***

Hassan Kadir & Ors v. Mohamed Moidu Mohamed & Anor [2011] 5 CLJ 136 FC ***(refd)***

Jamir Hassan Najir Hassan v. Kang Min [1991] 3 CLJ 2490; [1991] 2 CLJ (Rep) 773 HC ***(refd)***

Karuppiah Chettiar v. Subramaniam [1971] 1 LNS 43 FC ***(refd)***

Lian Meng Wah v. Uma Parvathy Thothathri [2013] 10 MLJ 288 ***(refd)***

Paragon Finance Plc v. DB Thakerar & Co [1999] 1 All ER 400 ***(refd)***

Perwira Habib Bank Malaysia Bhd lwn. Loo & Sons Realty Sdn Bhd & Anor (No 1) [1996] 4 CLJ 171 CA ***(refd)***

Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor [2009] 4 CLJ 57 CA ***(refd)***
Takako Sakao v. Ng Pek Yuen & Anor [2010] 1 CLJ 381 FC ***(foll)***
Tay Choo Foo v. Tengku Mohd Saad Tengku Mansur & Ors And Another Appeal [2009] 2 CLJ 363 CA ***(refd)***
Temenggong Securities Ltd & Anor v. Registrar of Titles, Johore & Ors [1974] 1 LNS 175 FC ***(refd)***
Vellasamy Pennusamy & Ors v. Gurbachan Singh Bagawan Singh & Ors [2012] 2 CLJ 712 CA ***(refd)***
Vong Ban Hin v. Laksamana Realty Sdn Bhd [2006] 1 LNS 223 HC ***(refd)***
Zaharah A Kadir v. Ramunia Bauxite Pte Ltd & Anor [2011] 1 LNS 1015 CA ***(refd)***

Legislation referred to:
Land Acquisition Act 1960, ss. 2, 8, 10, 12
National Land Code, ss. 22, 433B

For the appellant - Jason Lai (Nurul Shafiah Abdul Shukor with him); M/s Munhoe & Mar
For the 1st respondent - Ashok Kandiah (K Mahendran with him); M/s Harniza & Co
For the 2nd respondent - Rafiqha Hanim Mohd Rosli (Mohd Abdul Hakim Mohd Ali with him); State Legal Advisor, Selangor

[Appeal from High Court, Kuala Lumpur; Land Reference No: MT-15-132 & MT-15-133-10-2012 (overruled)]

Reported by Sandra Gabriel

JUDGMENT

Abdul Rahman Sebli JCA:

[1] These two consolidated appeals arose from the decision of the High Court at Shah Alam adjudging that the compensation for the compulsory acquisition of land held under Lot PT 3708, HS(D) 4588, Mukim Api-Api, District of Kuala Selangor was payable to the first respondent, Perbadanan Kemajuan Pertanian Selangor ("PKPS"). The learned judge rejected the appellant, JW Properties Sdn Bhd's claim that it was entitled to the compensation.

[2] Although there were two appeals before us, parties confirmed that they were against only one judgment of the High Court and they relate to only one subject matter, namely land held under Lot PT 3708, HS(D) 4588 Mukim Api-Api, District of Kuala Selangor. We reserved judgment after hearing arguments on 13 August 2015. We have now reached a unanimous decision and this is our judgment.

[3] We shall try to simplify the facts as they are not as straightforward as they can be. By alienation letter dated 13 June 1990, the Selangor State Government approved the alienation of a piece of land measuring 109.265 acres in the Mukim of Jugra, in the District of Kuala Selangor ("the Jugra land") to PKPS, a statutory body and agency of the State Government.

[4] Two years later, by alienation letter dated 28 July 1992, the State Government approved the alienation of another piece of land to PKPS, this time for an area measuring 137 acres in the Mukim of Api-Api, also in the District of Kuala Selangor ("the Api-Api land"). This is the subject matter of the present appeals.

[5] At the time of the approvals, the issue documents of title for these two plots of land had yet to be issued by the State Authority. Both lands were subject to the category of land use as being for aquaculture only and were also subject to a restriction in interest that the lands shall not be sold, leased, charged or transferred in any way whatsoever without the consent of the State Authority.

[6] With the approvals for alienation, PKPS became the beneficial owner of both the Jugra and the Api-Api lands. By a Sale and Purchase Agreement executed on 31 July 1995 ("the first agreement"), PKPS in its capacity as beneficial owner sold both lands to a company in which it was a shareholder, namely PKPS Aquaculture Sdn Bhd ("PKPS Aquaculture").

[7] On the same day that it sold the Jugra and Api-Api lands to PKPS Aquaculture, PKPS entered into a Sale of Shares Agreement ("the second agreement") with another company under the style and name of Suati Holdings Sdn Bhd ("Suati Holdings"). The agreement was for the sale of all of PKPS shares in PKPS Aquaculture to Suati Holdings for a purchase consideration of RM4 million. Under the agreement, Suati Holdings was also to take over and assume full responsibility for PKPS Aquaculture's liabilities in the sum of RM7 million which included the corporate guarantee in the sum of RM4 million given by PKPS. This second agreement was referred to in cl. 6 of the first agreement as follows:

> By another agreement of even date (hereinafter referred to as "the Sale of Shares Agreement") between the Vendors herein of the one part and SUATI HOLDINGS SDN BHD of the other part, the Vendors herein have agreed to sell and the said SUATI HOLDINGS SDN BHD have agreed to purchase the entire issued shares of the Purchasers herein upon the consideration and subject to the terms and conditions contained in the said Sale of Shares Agreement, a copy of which is hereby annexed to this Agreement and to be considered as an integral part of this Agreement.

[8] Clause 3 of the first agreement is crucial and is reproduced in full below to provide context:

> 3. **Permission Of The Relevant Authorities**
>
> (1) The parties hereto expressly agree and declare that this sale and purchase agreement shall be subject to the parties securing the necessary consents and approvals from the State Authority of Selangor Darul Ehsan as well as from the Foreign Investment Committee.

(2) The consents aforementioned shall be obtained by the Vendors or the Purchasers (as the case may be) within six (6) months of the date of this Agreement (hereinafter referred to as "the original period") or such longer time as the parties hereto may subsequently in writing agree (hereinafter referred to as "the extended period").

(3) In the event that the consent herein mentioned shall not be obtained by the Vendors within the original period or the extended period, this agreement shall be determined and upon such determination this Agreement shall forthwith become null and void and cease to have any further force and effect whatsoever and whatever monies (if any) as shall have been paid by the Purchasers to the Vendors under the terms of this Agreement shall be refunded in full to the Purchasers free from interest and thereafter no party shall have any claims whatsoever against the other under this Agreement.

[9] The importance of this clause, in particular cl. 3(3), is that it imposed on PKPS the obligation to obtain the necessary consent from the State Authority for the transfer of the Jugra and Api-Api lands to PKPS Aquaculture and that in the event the consent was not obtained within six months from the date of the agreement, the first agreement "shall be determined" and become null and void, unless the parties agreed in writing to extend the period.

[10] As for the mode of payment for the sale of the Jugra and Api-Api lands to PKPS Aquaculture, this was set out in cl. 2 of the first agreement in the following terms:

Subject to Clauses 3 and 8 herein, the purchase price shall be paid by the Purchasers to the Vendors in the manner as stipulated in section 2 of the First Schedule hereto, which said payment shall have regard to the provisions of Clause 3.2 of the Sale of Shares Agreement as referred to in Recital (6) of this Agreement. Upon payment being made by the aforesaid SUATI HOLDINGS SDN BHD to the Vendors pursuant to the said Clause 3.2 of the Sale of Shares Agreement, the parties hereby declare that the purchase price as stipulated in the First Schedule hereto shall be deemed conclusively to have been paid by the Purchasers hereto to the Vendors.

[11] In gist what the above clause stipulates is that the full purchase price for the Jugra and Api-Api lands was deemed conclusively to have been paid by PKPS Aquaculture to PKPS upon receipt by PKPS of the RM4 million purchase price paid by Suati Holdings to PKPS Aquaculture for the purchase of the PKPS Aquaculture shares under the second agreement.

[12] It was a rather complicated way of doing things but what was intended and agreed by the parties was that the purchase price for the Jugra and Api-Api lands was to be paid by Suati Holdings by way of purchasing PKPS shares in PKPS Aquaculture. There is no dispute that PKPS had received in

full the purchase consideration of RM4 million for the sale of its shares in PKPS Aquaculture to Suati Holdings, which payment must necessarily include payment for the purchase of the Api-Api land.

[13] Pursuant to cl. 7 of the first agreement, PKPS delivered vacant possession of the Jugra and Api-Api lands to PKPS Aquaculture, thereby divesting all its rights, title and interest in the two lands to PKPS Aquaculture.

[14] Having been bought over by Suati Holdings, PKPS Aquaculture changed its name to "Suati Aquaventures Sdn Bhd". To avoid confusion, we shall refer to Suati Aquaventures Sdn Bhd as PKPS Aquaculture. By a Sale and Purchase Agreement dated 16 April 1997 ("the third agreement"), PKPS Aquaculture agreed to sell the Api-Api land to the appellant, JW Properties Sdn Bhd.

[15] Under a Deed of Assignment of even date, PKPS Aquaculture assigned all its rights, title and interest in the Api-Api land to the appellant. It was only after this sale of the Api-Api land to the appellant by PKPS Aquaculture that the issue document of title to the land was issued in 1998, to be precise on 27 March 1998. But it was issued under the name of PKPS as the registered owner and PKPS remains the registered owner of the land to this day.

[16] PKPS was duly informed by the appellant of the assignment of rights to the appellant *vide* letter dated 12 November 1998. In the same letter, the appellant requested PKPS to procure the issuance of the issue document of title to the Api-Api land and thereafter to transfer the land to the appellant. The appellant also notified PKPS that it had expended a large sum of money on the land by improving it and developing it into an operational aquaculture farm.

[17] Counsel for PKPS submitted that PKPS was neither informed nor its consent sought by PKPS Aquaculture before the execution of the agreement to sell the Api-Api land to the appellant. Having regard to the totality of the evidence and the surrounding circumstances, it is highly improbable that it had no knowledge and had not been informed of the agreement.

[18] Since purchasing the Api-Api land in 1997, the appellant had enjoyed quiet uninterrupted occupation of the land for close to 20 years. In fact the appellant had filled up the land and developed it into a prawn farm. There was never any dispute by PKPS that the appellant was in lawful occupation of the land, nor was there any suggestion that the appellant was squatting on the land. Neither did PKPS take any step or action to challenge the appellant's occupation of the land. This is not surprising perhaps as PKPS had already been paid for the land and had been made aware of the assignment of rights by PKPS Aquaculture.

[19] On 16 December 2011, a s. 8 Notice in Form D was published in the gazette for the intended acquisition of the Api-Api land. An acquisition would have the effect of evicting the appellant from the land, on which they had spent RM4 million to acquire and on which they had been in occupation without interruption for close to twenty years.

[20] In *Cahaya Baru Development Bhd v. Lembaga Lebuhraya Malaysia* [2010] 8 CLJ 761 the Federal Court held that to determine whether a claimant is a "person interested", one has also to take into account the background facts leading to the issuance of the declaration that the land was required for a public purpose under s. 8 of the Land Acquisition Act 1960 ("the Act"). In the present case it is undisputed that the appellant is a "person interested" in the compensation within the meaning of s. 2 of the Act.

[21] A land enquiry that followed resulted in an award being made on 15 February 2012 by the Land Administrator (second respondent) in favour of PKPS in the sum of RM3,035,145. However, in view of the competing claims by PKPS and the appellant over the compensation, the second respondent ordered the awarded sum to be deposited into court pending the determination of their claims by the High Court.

[22] The dispute then went for hearing before the Shah Alam High Court. On 4 July 2014 the learned judge decided that the appellant was not the beneficial owner of the Api-Api land and accordingly ruled that the person to whom the compensation was payable was the registered proprietor of the land and that is PKPS. Being dissatisfied with the decision, the appellant appealed to this court. In this appeal, the second respondent supported PKPS's position, principally on the ground that "registration is everything".

[23] From the grounds of judgment, it is clear that the whole basis for the learned judge's decision was that the consent of the State Authority had not been obtained for the transfer of the Api-Api land to PKPS Aquaculture. That was the focal point of the High Court's decision. Simply put, the reasoning was that since no consent from the State Authority had been obtained, no beneficial interest in the land had passed to PKPS Aquaculture. Therefore it follows that PKPS Aquaculture could not have passed any beneficial interest in the land to the appellant, *nemo dat quod non habet* (no one can give what he has not). It was in fact a finding that the appellant failed to establish its lawful interest in the Api-Api land.

[24] In arriving at the conclusion that the appellant had no beneficial interest in the Api-Api land, the learned judge relied on the following authorities: *Goo Hee Sing v. Will Raja Perumal & Anor* [1994] 1 CLJ 255; [1993] 3 MLJ 610; *Lian Meng Wah v. Uma Parvathy Thothathri* [2013] 10 MLJ 288; *Jamir Hassan Najir Hassan v. Kang Min* [1991] 3 CLJ 2490; [1991] 2 CLJ (Rep) 773; [1992] 2 MLJ 46; *Perwira Habib Bank Malaysia Bhd lwn. Loo & Sons Realty Sdn Bhd & Anor (No 1)* [1996] 4 CLJ 171; [1996] 3 MLJ 409; *Vong Ban Hin v. Laksamana Realty Sdn Bhd* [2006] 1 LNS 223; [2006] 3 MLJ 259.

[25] We do not wish to go through the facts of each case but suffice for us to say that the *ratio decidendi* of the cases do not apply to the facts and circumstances of the present case. First of all they are not decisions on land acquisition claims under the Act, which is a special statute specifically enacted to deal with claims by "person interested" on account of the compulsory acquisition of land.

[26] Clearly different considerations apply in determining a claim by an interested person for compensation under the Act compared with considerations that the courts in the cases cited by the learned judge had to take into account in dealing with the claims. The interest that the claimant is required to establish for the purpose of establishing his claim for compensation under the Act is different from the interest that is recognised under the National Land Code ("the Land Code"), which stresses on registration or registrable interest, hence the catchphrase "registration is everything".

[27] Registration alone cannot be the basis for determining an interested person's entitlement to compensation under the Act. If it were so, there would be no necessity to conduct an enquiry under s. 12 of the Act. The person entitled would as a matter of course be the registered owner or who had a registrable interest in the land. Any other "person interested" would stand no chance against such formidable claim of interest. The enquiry would then turn into a mere formality to confirm the registered owner's entitlement to the compensation.

[28] Paragraph 2 of Form E, which is the notice of enquiry issued under s. 10 of the Act states as follows:

> 2. All persons having interests in the said land, whether as proprietor, occupier, lessee, chargee, tenant or otherwise, are hereby required to appear before the undersigned at the above time either personally or by agent and there to state:
>
> (a) the nature of their respective interests in the land;
>
> (b) the amount and particulars of their claims to compensation for such interests;
>
> (c) their objections, if any, to the measurements of approximate area given in the Schedule below;
>
> (d) the names of any other person known to the party or his agent to possess any interests in the land or any part thereof, and to produce all documents relating to their claims.

[29] The first few words of the paragraph shows that a "person interested" is not confined to a registered owner of the land. It includes an occupier. Having regard to the spirit of the Act, what the court in a claim for compensation under the Act has to determine is whether the claimant has

established his lawful interest in the land. It is not just any interest of course. It must be an interest that is recognised by law, for example if the claimant has a registrable interest, beneficial interest or equitable interest in the land.

[30] Parliament in its wisdom has decided not to give an exhaustive list of the categories of persons entitled to be paid compensation under the Act, other than to exclude tenants at will. The categories must therefore be left open, as intended by the Legislature. In *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 4 CLJ 57; [2009] 3 MLJ 809, the Court of Appeal in itemising the different categories of persons interested under the Act included the following persons:

(i) a person who has entered into a contract to purchase a piece of land, ie, a beneficial owner.

(ii) an option holder.

(iii) a person having equitable interest in the acquired property under trust.

[31] The sole question for determination in the appeals before us is whether the appellant as "a person interested" had established its lawful interest in the Api-Api land. On the evidence before the court we must say at the outset that it had done so. In this regard, we take note of the fact that the appellant was merely claiming compensation arising from the acquisition of the land which it had paid for, *albeit* through the buying over of PKPS Aquaculture and on which it had been in quiet occupation for a very long period of time and which it had turned into an aquaculture farm.

[32] The appellant was not seeking to be registered as owner of the land, nor was it applying for specific performance of any of the agreements entered into between any of the parties. Even if the first agreement had been determined by effluxion of time and that no action for specific performance was taken by any party as pointed out by counsel for PKPS, it has no bearing on the issue of whether the appellant was entitled to be compensated for the acquisition of the Api-Api land.

[33] We also take note of the fact that PKPS had received in full the purchase price of RM4 million for the Jugra and Api-Api lands through that peculiar arrangement with Suati Holdings in the second agreement. There can be no denying that it was the appellant who came up with the money to pay for the Jugra and Api-Api lands that PKPS Aquaculture purchased from PKPS.

[34] There is also no dispute that PKPS did not refund a single cent of the money that it had received for the sale of the Jugra and Api-Api lands. Under the circumstances, to allow PKPS to benefit from the acquisition of the land merely on account of the fact that it is the registered proprietor of the Api-Api land would be nothing short of unjust enrichment.

[35] In our view, the appellant as *bona fide* purchaser for value of the Api-Api land had acquired sufficient lawful interest over the land to entitle it to be paid the compensation sum notwithstanding the fact that the consent to transfer had not been obtained from the State Authority. PKPS cannot be allowed to benefit from its own wrong and be rewarded with a windfall which it did not deserve. PKPS's insistence that it be paid the compensation sum by reason of its being the registered owner of the land without considering the appellant's interest is unconscionable conduct. Equity must step in as this is not something that the court should condone.

[36] We need to take a closer look at why consent from the State Authority was not obtained for the transfer of the Api-Api land to PKPS Aquaculture. But before that, it is important to bear in mind that this case is not about whether the transfer of the land could be effected without the consent of the State Authority. The answer to that is obvious as the law prohibits transfer without consent by the State Authority. Rather, this case is about whether the appellant or both the appellant and PKPS are entitled to compensation arising from the compulsory acquisition of the Api-Api land.

[37] PKPS candidly admitted in Lampiran 4(ii) of the Form N dated 23 April 2012 that it had intentionally withheld the transfer of the Api-Api land to PKPS Aquaculture, on the purported basis that Suati Holdings (and not, it is to be noted, PKPS Aquaculture qua purchaser of the land) had breached the second agreement, ie, the Sale of Shares Agreement and the Letter of Guarantee and Indemnity dated 31 July 1995 issued by Suati Holdings.

[38] It is clear that PKPS's failure to obtain the consent from the State Authority had nothing to do with PKPS Aquaculture's breach of the first agreement. It was for an entirely different reason. This is important as it was PKPS's duty under cl. 3(3) of the first agreement to obtain the requisite consent from the State Authority.

[39] This is therefore not a case where PKPS had applied for the consent from the State Authority but was denied by the State Authority. This is a case where PKPS had wilfully and intentionally refused and failed to apply for the consent from the State Authority, in breach of its obligation under the first agreement.

[40] The Federal Court decision in *Karuppiah Chettiar v. Subramaniam* [1971] 1 LNS 43; [1971] 2 MLJ 117 may throw some light on the issue, although the case is not directly on point we must admit. In that case the vendor sold his entire interest in the land to the purchaser, Mr Subramaniam. However the vendor remained the registered proprietor as he failed to deliver the issue document of title. It was therefore due to the fault of the vendor that the transfer of the land could not be effected. The Federal Court held as follows:

> In the instant case Mohamed Sharjudin having sold his entire interest in the land and received payment in full undoubtedly holds the legal estate only as bare trustee for Subramaniam, who is the equitable owner. Want of registration cannot affect his equitable rights. Section 206 of the National Land Code, which provides for registration of instruments dealing in land, contains an express proviso in subsection (3) that "nothing in subsection (1) shall affect the contractual operation of any transaction relating to alienated land or interest therein.

[41] By way of comparison, PKPS Aquaculture in the present appeal was placed in the same shoes by PKPS as Mr Subramaniam was by the vendor in the above Federal Court case. The general principle is that a person should not take advantage of his own wrong: See *Gimstern Corp (M) Sdn Bhd & Anor v. Global Insurance Co Sdn Bhd* [1987] 1 CLJ 123; [1987] CLJ (Rep) 102; [1987] 1 MLJ 302 where the then Supreme Court held:

> The rule is that if a stipulation in a contract be that the contract shall be void on the happening of an event which one or either parties can by his own act or omission bring about, then the party who by his own act or omission brings that event about, cannot be permitted to insist upon the stipulation himself or to compel the other party who is blameless, to insist upon it, because to permit the blameable party to do either would be to permit him to take advantage of his own wrong to put an end to the contract, *vide* the judgment of Lord Atkinson in *New Zealand Shipping Company Ltd v. SDAECD France* [1919] AC 1.

[42] With regard to the breach of the second agreement and the Letter of Guarantee and Indemnity by Suati Holdings which PKPS used as an excuse to withhold its application for consent from the State Authority, it is undisputed that PKPS had commenced civil proceedings against Suati Holdings and had in fact obtained judgment in the sum of RM6,205,996.59 and RM871,122.21 respectively.

[43] What this means is that the dispute between PKPS and Suati Holdings had already been adjudicated by the court and had resulted in monetary judgment being awarded to PKPS. Thus, the purported ground on which PKPS sought to justify its refusal to apply for the consent from the State Authority was at best a red herring.

[44] The learned judge was of the further view that mere physical occupation of the Api-Api land by the appellant cannot entitle it to the compensation because under the first agreement, vacant possession of the land was only given to PKPS Aquaculture and not to the appellant. In other words there was no privity of contract between the appellant and PKPS as the appellant was not even a party to the first agreement (*Jamir Hassan Najir Hassan v. Kang Min* [1991] 3 CLJ 2490; [1991] 2 CLJ (Rep) 773; [1992] 2 MLJ 46; *Vong Ban Hin v. Laksamana Realty Sdn Bhd* [2006] 1 LNS 223; [2006] 3 MLJ 259).

[45] It was the learned judge's finding that PKPS was not a bare trustee for the Api-Api land. In his view, PKPS would only become a bare trustee once the sale and purchase agreement with PKPS Aquaculture was completed, that is to say upon receipt of the full purchase price and when PKPS had given PKPS Aquaculture a duly executed, valid and registrable transfer of the land in due form in favour of PKPS Aquaculture (*Borneo Housing Mortgage Finance Bhd v. Time Engineering Bhd* [1996] 2 CLJ 561 FC). The learned judge then concluded:

> The emphasis is on the word 'registrable' transfer as the transfer must be registrable on presentation for registration. In this case it presupposes that the consent for the transfer from the State Authority must have been obtained; and until and unless the State Authority's consent was obtained, the transfer cannot be said to be transferable.

[46] Again the emphasis here was on the question of whether PKPS had the capacity to divest its beneficial, and therefore registrable, interest in the Api-Api land to PKPS Aquaculture without the consent of the State Authority. At the risk of repetition we need to emphasise that the issue is not whether the transfer of the land could be effected without the consent of the State Authority. The issue is whether the appellant or both the appellant and PKPS are entitled to compensation arising from the compulsory acquisition of the Api-Api land.

[47] On the issue of bare trust mentioned by the learned judge, there in sufficient adjective law on the subject: See *Takako Sakao v. Ng Pek Yuen & Anor* [2010] 1 CLJ 381; [2009] 6 MLJ 751 FC; *Hassan Kadir & Ors v. Mohamed Moidu Mohamed & Anor* [2011] 5 CLJ 136 FC; *Temenggong Securities Ltd & Anor v. Registrar of Titles, Johore & Ors* [1974] 1 LNS 175; [1974] 2 MLJ 45 FC; *Tay Choo Foo v. Tengku Mohd Saad Tengku Mansur & Ors And Another Appeal* [2009] 2 CLJ 363 CA; *Vellasamy Pennusamy & Ors v. Gurbachan Singh Bagawan Singh & Ors* [2012] 2 CLJ 712; [2010] 5 MLJ 437 CA; *Zaharah A Kadir v. Ramunia Bauxite Pte Ltd & Anor* [2011] 1 LNS 1015; [2012] 1 MLJ 192 CA.

[48] In *Takako Sakao (f) (supra)* the appellant, a Japanese citizen and the first respondent decided to acquire a shop house to operate a restaurant business. The appellant contributed RM194,610 towards the purchase price of the shop house. The property was to be purchased and registered in the joint names of the appellant and the first respondent in equal shares. Instead the first respondent purchased the property for RM950,000 and registered it in her sole name. Subsequently she sold the property to the second respondent company for RM1.9 million.

[49] The appellant's contention that a trust had arisen in her favour was rejected by the High Court which held that s. 433B of the Land Code barred the appellant from enforcing any trust that may have arisen in her favour by

reason of her contribution towards the purchase price of the shop house. Section 433B of the Land Code requires a foreigner to obtain the prior approval of the State Authority to acquire land.

[50] The Court of Appeal affirmed the High Court decision. Takako Sakao then appealed to the Federal Court and succeeded. It was held, *inter alia* by the Federal Court as follows:

(1) A constructive trust arises by operation of law whenever the circumstances are such that it would be unconscionable for the owner of the property (usually not necessarily the legal estate) to assert his own beneficial interest in the property and deny the beneficial interest of another, citing with approval *Paragon Finance Plc v. DB Thakerar & Co* [1999] 1 All ER 400.

(2) There was a strong element of unjust enrichment and lack of probity on the part of the first respondent.

(3) It is settled law that trust is an exception to the common law rule of privity of contract. As such the appellant could enforce the trust against both the first and second appellant.

(4) The appellant was entitled to trace her half share of the property into the hands of anyone who acquired it.

(5) It was not a case in which the appellant deliberately sought to evade complying with s. 433B of the Land Code and she was not guilty of such misconduct. Section 433B had no application to the constructive trust imposed upon the first respondent.

[51] In our view the fact pattern of the present case falls squarely within the parameters of a constructive trust, as was the case with the appellant in *Takako Sakao (f) (supra)*. It would therefore be unconscionable for PKPS to assert its own interest over the Api-Api land while denying the rightful interest of the appellant. A constructive trust in favour of the appellant had arisen by operation of law.

[52] For all these reasons, we are of the view that the learned judge was wrong in deciding that the compensation is payable to PKPS on the sole basis that no consent from the State Authority had been obtained for the transfer of the Api-Api land to PKPS Aquaculture. It is clear to us that the appellant had acquired an equitable and therefore lawful interest in the Api-Api land.

[53] In the circumstances the appeal against PKPS, the first respondent, is allowed with costs. The High Court Order dated 13 February 2014 is set aside and we rule that the appellant, JW Properties Sdn Bhd is the person entitled to receive the compensation for the land held under Lot 3708, HS(D) 4588, Mukim Api-Api, District of Kuala Selangor, Selangor Darul Ehsan. The deposit is to be refunded to the appellant.

A **[54]** As for the second respondent, it was argued in the alternative that if this court were to decide in favour of the appellant, no adverse order should be made against the second respondent as he is protected by s. 22 of the Land Code, which provides as follows:

> No officer appointed under this Part shall be liable to be sued in any civil
B court for any act or matter done, or ordered to be done or omitted to be done, by him in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on him by or under this Act.

[55] We do not think the provision provides blanket immunity to a land
C administrator from civil action. He is only protected if he acts in good faith and in the intended exercise or performance of his duty conferred or imposed on him by or under the Land Code. That much is clear from the provision. This brings us to the question whether the second respondent in this case had acted in bad faith in conducting the land enquiry.

D **[56]** On the facts we can only say that there is no evidence to show that the second respondent had acted otherwise than in good faith in conducting the land enquiry. He was merely performing his public duty under the Land Code. We are therefore inclined to agree with counsel that the second respondent is protected by s. 22 of the Land Code.

E **[57]** The second respondent should not have been sued in the first place. But at the same time the second respondent should have remained neutral in these appeals instead of vigorously defending his decision and supporting the appellant's appeal when no bad faith had been alleged against him. Having given the matter careful consideration we make no adverse order against the
F second respondent, including on costs.

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